

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 06-0421P**

**Income Tax**

**For the Short Period ended June 30, 2005**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

**STATEMENT OF FACTS**

The late penalty was assessed on the late payment of the filing of a corporate income tax return for the Short Period ended June 30, 2005. The taxpayer is an Indiana resident.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the penalty be abated as (1) the taxpayer misunderstood the basis for taxation in the corporate income tax return, and (2) the taxpayer paid the amount which the taxpayer "reasonably expected" to be due at the original due date.

With regard to misunderstanding the tax basis, this would equate to inattention. The Department states inattention is negligence and subject to penalty.

With regard to "reasonably expected", the taxpayer says the taxpayer paid the amount due at the original due date that was reasonably expected, and therefore according to IC 6-8.1-6-1(c), penalty is not due. IC 6-8.1-6-1(c) states, "...the person must pay at least ninety percent (90%) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date..." The Department takes the position that reasonably expected equates to reasonable care, and, that taxpayer did not act with reasonable care as the taxpayer was inattentive.

The regulation which references reasonable care and inattention is 45 IAC 15-11-2(b) which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer did not act with reasonable care as the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

### **FINDING**

The taxpayer's penalty protest is denied.